No. 248.

Brf. of Atty. Gen.l (Filed) Oct. 1902

Filed Oct. 11, 1902.

Office Supreme Court U.S.
FILED
OCT 11 1902
JAMES H. McKENNEY
Clerk.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR THE APPELLANTS.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

BRIEF FOR THE APPELLANTS.

STATEMENT.

This is an action brought by Edward A. Moseley, secretary and disbursing agent of the Interstate Commerce Commission, against the United States, in which he sought to recover a judgment for certain items of disbursements made by him as such disbursing agent which were disallowed in the settlement of his accounts at the Treasury Department. The court below found the facts to be as set forth in the record, and it was decided as a conclusion of law that the appellee was entitled to recover judgment for those disbursements. No opinion was given by the Court of Claims, but it appears from their conclusion of law (R., 18) that the case was decided "on the authority of the Moseley case," reported in 35 C. Cls. R., 347.

In that case the material facts were precisely similar to those of the present case, and the parties and the question of law were also the same as in the present case. Appellants now contend that the court below erred in their judgment in that case, and therefore they now assign like error to the judgment rendered in the present case.

In both cases, as more fully set forth in the findings of fact, the appellee sued as secretary and disbursing agent of the Interstate Commerce Commission; by direction of that Commission he made certain payments to telegraph companies for telegrams sent on business of the Commission, and he rendered his accounts for those disbursements, together with itemized vouchers therefor which were approved by the chairman of the Commission, to the accounting officers of the Treasury Department for settlement. In settling the accounts credit for these vouchers was disallowed, after a long correspondence, by the proper Auditor of the Treasury Department, upon the ground that the said disbursing agent had not complied with the directions of the Comptroller of the Treasury, which required him to send to the Auditor the telegrams mentioned in the vouchers, or copies thereof, or a certificate signed by the chairman of the Commission to the effect that the telegrams were of a confidential nature.

Instead of complying with that requirement the appellee deposited in the Treasury of the United States the amount of the disbursements so disallowed, and brought this and the former suit to recover judgment for that amount.

ASSIGNMENT OF ERROR.

The court below erred in their conclusion of law that the claimant was entitled to "recover judgment against the United States upon the authority of the *Moseley case*" (35 C. Cls. R., 347), and also in rendering judgment on that authority.

The court below had no jurisdiction to render a judgment in that case, because it was there held as a conclusion of law, as appears from the opinion of the court, that the "alternative requirements" [of the Comptroller] "of copies of telegrams, or if they were confidential, a certificate to that effect from the chairman of the Commission was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account." (35 C. Cls. R., 355, 356.)

THE QUESTION AT ISSUE.

The only question of law involved in this appeal is as to—

Whether the Court of Claims had jurisdiction to render a judgment against the United States for certain disbursements made by appellee, as secretary and disbursing agent of the Interstate Commerce Commission, to telegraph companies for official telegrams where the itemized vouchers for those disbursements had been approved by the chairman of the Interstate Commerce Commission, and for which vouchers credit was disallowed by the accounting officers of the Treasury Department in the settlement of said disbursing agent's

account, upon the ground that he "had not complied with the requirement of the Comptroller to furnish the original telegrams, or copies thereof, or, if of a confidential nature, to furnish in lieu thereof a certificate to that effect signed by the chairman of the Commission"?

POINTS OF ARGUMENT.

As will be seen from the correspondence set forth in the findings of fact, the Comptroller of the Treasury has decided that it is necessary to have the telegrams or copies thereof, or else a certificate of the chairman of the Commission for confidential telegrams, filed with the disbursing agent's account in order to enable the proper auditor to determine whether the telegrams were sent or received upon public business, whether the amounts charged for the service were according to the prescribed rates, etc. (R., 11.)

The Comptroller is the chief law officer of the Treasury Department in respect to questions arising in the settlement of accounts. He decided that the information so required was necessary to enable the auditor to settle this class of accounts—that is to say, to determine the question as to whether the disbursing agent was entitled to credit for the disbursements so made by him.

The court below having decided as a conclusion of law that the requirement of the Comptroller was "not unreasonable," it is submitted that they erred in rendering judgment for the appellee in the former case, and therefore they also erred in rendering a judgment in his favor in the present case. In the settlement of

these accounts the accounting officers have a discretionary duty to perform, and it is for them to determine the kind, the quantity, and quality of proof which would satisfy them in allowing credits for disbursements of public moneys. In other words, the allowance of such credits involves the exercise of executive discretion.

The Acting Comptroller's views in respect to the authority of the accounting officers, as set forth in the record, are as follows:

> The accounting officers are charged with the duty of passing upon accounts, and where disbursing agents claim credit for disbursing public money the accounting officers are entitled to the best evidence that such disbursements were legal and proper; and the general rule is that where the disbursement is on account of telegrams, the telegrams themselves should accompany the vouchers. The telegrams show whether they were on public business, from whom and from where, and to whom and to where sent, whether day or night messages, the number of words, whether over bond-aided lines, and whether the charge for the same message had been made in some other account, etc. To this general rule there is an exception. If the chairman of the Interstate Commerce Commission had certified that any particular telegrams sent by the Commission were of a confidential character, and that it would be prejudicial to the public interest to disclose their contents, and such certificate covered all material points necessary to a correct audit,

> such certificate would have been accepted in lieu of the telegrams. Such a requirement is not unreasonable, and I can not see that it will work any greater inconvenience to the Commission than it does to all the other Departments of the Government. (R. 11.)

The principle here contended for is set forth and recognized in *Decatur* v. *Paulding*, 14 Pet., 497, 519; *Watkins* v. *United States*, 9 Wall., 759, 764; *United States* v. *Fletcher*, 147 U. S., 664, 666; and it is based upon the rule that the judicial power will not interpose to limit or direct the action of departmental officers in respect to matters within their discretion.

In the case of *United States* v. *Fletcher*, above cited, it was held that where claims against the United States are presented to the proper Department for allowance and the Department suspends action until proper vouchers are furnished, or until other reasonable requirements are complied with, the court should not assume jurisdiction until final action is taken. The principle is there recognized that the Comptroller of the Treasury has the right to require an explanation as to items for which credit was asked in the accounts of a United States marshal, and, *held*, that it was an error in the court below to allow such items while a claim therefor was not finally determined at the Treasury Department.

In the case at bar it is true that the claim for credit was finally determined by rejection for want of compliance to the Comptroller's requirement; nevertheless it is respectfully submitted that the court below should

not have taken jurisdiction of the claim, for the reason that a lawful and, as the court held, a reasonable requirement of the Comptroller was not complied with by the appellee. To entertain a suit under such circumstances would be to enable the disbursing agent to disregard the executive discretion and power vested by law in the accounting officers of the Treasury Department.

It must be apparent to the court that, although the incurring of expenses and the duty of paying them are matters of executive discretion on the part of the Interstate Commerce Commission, there is another executive discretion vested in the accounting officers, in the matter of passing upon the sufficiency of the vouchers for such payments.

L. A. Pradt,
Assistant Attorney-General.

O

No. 248.

App't to Br. of Appellant.

Office Supreme Court U.S.
FILED
OCT 31 1902
Clerk.

Filed Oct. 31, 1902.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

APPENDIX TO BRIEF FOR THE APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

THE UNITED STATES, APPELLANT,
v.
EDWARD A. MOSELEY. } No. 248.

APPEAL FROM THE UNITED STATES COURT OF CLAIMS.

APPENDIX TO BRIEF FOR THE APPELLANT.

The following is a copy of the decision of the court in the case of *Edward A. Moseley* v. *The United States* (35 C. Cls. R., p. 347), referred to in the brief for the appellant herein:

Court of Claims.

No. 21473

(Decided April 2, 1900.)

EDWARD A. MOSELEY
v.
THE UNITED STATES.

This case having been heard by the Court of Claims, the court, upon the evidence, makes the following

FINDINGS OF FACT.

I.

The claimant herein is the secretary and disbursing agent of the Interstate Commerce Commission, and as

such disbursing agent submitted his accounts showing expenditures for and on behalf of said Commission to the Auditor for the State and other Departments for the second and third quarters of the fiscal year ending June 30, 1898, in the form of itemized vouchers approved by the chairman of the Commission, which accounts were examined and approved by said Auditor and settled, and the claimant was duly credited with the expenditures embraced in said account. Among which items of expenditures so settled, for which the claimant was duly credited, were sundry payments shown in said accounts to have been made by him to the Western Union Telegraph and Postal Telegraph Cable companies, aggregating $73.24.

II.

Thereafter, March 13, 1899, and within one year from the date of the settlement so made by the Auditor as aforesaid, the Comptroller withdrew said accounts from the files for the purpose of revision under section 8 of the act of July 31, 1894 (28 Stat. L., 207), and so advised the claimant by letter of that date, noting therein his objections to the several items of said account and calling upon the claimant for explanation in relation thereto.

Thereafter the claimant made explanation concerning the several items in his account; and the Comptroller, on May 26, 1899, allowed all the items of said account except the items for telegrams, as aforesaid, which were disallowed.

III.

The Comptroller assigned as his reasons for the disallowance of such items of expenditure for telegrams

that under the ruling of the Comptroller (4 Comp. Dec., 233) the original telegrams or copies thereof were not furnished therewith.

The claimant, under date of March 27, 1899, in relation thereto informed the Comptroller as follows:

> The Commission instructs me to say that for the present it declines to submit copies of the telegrams covered by these vouchers. Aside from the fact that it is impracticable to do so in some cases, a considerable number of the messages were highly confidential, and the Commission does not think it suitable that their contents should be known to every clerk who has access to your files.
>
> These vouchers show the dates, number of words, places from and to which sent, and the charge for each message transmitted. The chairman has certified to their necessity and approved the amount paid therefor. No law requires that copies shall be exhibited to the accounting officers, and any general regulation to that effect would be unreasonable as applied to the telegraph business of the Commission.
>
> Entertaining this opinion, the Commission directs me to inquire whether you will insist upon being furnished with copies of its telegrams.

In response thereto the Comptroller, under date of April 5, 1899, said:

> *Item 13.*—Telegrams. Original telegrams or copies are required (4 Comp. Dec. 233). If any of the telegrams were confidential, furnish a certificate from the chairman of the Commission stating that it would be prejudicial to the public interests to disclose the contents. Copies of all other telegrams are required. Confidential telegrams should be described by dates and amounts in the certificate to be signed by the chairman of the Commission.

Thereafter, under date of April 29, 1899, the claimant furnished the Comptroller with the action of the Interstate Commerce Commission in relation to the revision of his said accounts, as follows:

ORDER OF COMMISSION REFERRED TO.

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., the 27th day of April, A. D. 1899.

Present: Hon. Martin A. Knapp, chairman; Hon. Judson C. Clements, Hon. James D. Yeomans, Hon. Charles A. Prouty, commissioners.

The following proceedings were had, to wit:

The subject of the revision of accounts of the secretary and disbursing agent of the Commission by the Comptroller of the Treasury being under consideration, the secretary presented a communication from the Comptroller, dated April 17, 1899, relating, among other things, to the telegraphic messages of the Commission.

It was ordered that so much of the Comptroller's communication as requires copies of telegrams relating to the business of the Commission to accompany telegraph vouchers for which credit is asked be disregarded by the secretary and disbursing agent, the Commission holding that such messages are so far confidential as to justify refusal to disclose their contents, and that the requirement for their production is unreasonable and against the public interest.

It was also ordered, in accordance with the practice heretofore always required by the Commission, that no telegraph bills be paid by the disbursing agent except upon itemized vouchers, showing the date, name of sender and receiver, places from and to which sent, number of words and amount charged of each message paid for, and only after such itemized vouchers have

been carefully compared with the messages on file with the Commission.

A true copy:

EDW. A. MOSELEY, *Secretary.*

No further action was taken by the Comptroller looking to the allowance of said account, but his former action in reference thereto was allowed to stand; and thereafter, before the commencement of this suit, the claimant as conceded by the defendants, paid into the Treasury of the United States to their credit the said sum of $73.24.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant recover judgment in the sum of seventy-three dollars and twenty-four cents ($73.24).

PEELLE, J., delivered the opinion of the court:

This action is to recover for money paid into the Treasury by reason of the disallowance by the Comptroller of money expended by the claimant as disbursing agent of the Interstate Commerce Commission in the transmission of telegrams for and on behalf of the Commission.

The material facts are that the claimant, as disbursing agent, paid to the several telegraph companies, set out in the findings, $73.24 and presented his account therefor, with others, in the form of itemized vouchers approved by the chairman of the Commission, to the Auditor for the State and other Departments, for settlement. His accounts were settled by that officer and the claimant was credited with the amount so paid. The Comptroller, within a year thereafter, withdrew the accounts, with others, for revision, under

section 8, act of July 31, 1894 (29 Stat. L., 207); and while allowing such other accounts, disallowed the one for the money so expended for telegrams, on the ground that the claimant had not furnished therewith the original telegrams or copies thereof as required by the ruling of his office (4 Comp. Dec., 233), nor furnished in lieu thereof the certificate of the chairman of the Commission that such telegrams were confidential. Neither having been furnished as required, the amount was disallowed.

None of the facts stated are controverted by the defendants. The claimant predicates his right to recover back the money paid into the Treasury under the adverse ruling of the Comptroller on the ground that under the last paragraph of section 7 of the "act to regulate commerce," as amended by the act of March 2, 1889 (25 Stat. L., 855; I Supp. R. S., pp. 684, 690), "all of the expenses of the Commission, including all necessary expenses for transportation incurred by the commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission." And that under that provision of the act the claimant, as disbursing agent of the Commission, had no authority to inquire as to "whether the expenses for which the charge was made were, in fact, 'necessary,' or whether the 'business' charged for was, in fact, 'official;' that these were matters, under the act of Congress, for the chairman of the Commission to determine."

And, further, that the appropriation act of the same date (25 Stat. L., 939; I Supp. R. S., 698, paragraph 3),

providing "that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury," did not repeal or modify the act in respect of the duties of the claimant as such disbursing agent, and that when he presented his account in the form of itemized vouchers, approved by the chairman of the Commission, he was entitled to credit therefor; that the Comptroller in his revision of the account was limited in the discharge of his duties to the inquiry whether the amounts expended for the several objects named in the appropriation act exceeded the appropriation therefor, and whether such expenditures were itemized and approved by the chairman of the Commission.

The two acts referred to became law on the same day, though it is evident that the second act referred to followed the first and that it was inserted in the appropriation act to remove any doubt which the first might otherwise have created as to the authority and duty of the accounting officers in respect of the audit of such accounts.

Had the first been omitted from the interstate-commerce act, there would have been no necessity for the second, as such accounts would then have been subject to audit and adjustment the same as the accounts of other officers of the Government.

We are, therefore, inclined to the opinion that while the language "that hereafter expenses of the Interstate Commerce Commission shall be audited by the proper accounting officers of the Treasury" did not repeal the former act requiring the payment of such expenses to be made "on the presentation of itemized vouchers therefor approved by the chairman of the Commission," it did nevertheless so modify it as to subject such

expenses to audit "by the proper accounting officers of the Treasury," and that such audit necessitates an examination as to the correctness and legality of such expenses, with such satisfactory proofs thereof as may be required by the accounting officers.

The alternative requirement of copies of telegrams, or if they were confidential, a certificate to that effect from the chairman of the Commission was not unreasonable, especially as but one certificate of that character appears to have been contemplated for each quarterly account.

The question before us is, Are the payments shown in the account to have been made to the several telegraph companies proper and legal charges against the Government?

The claimant's statement of account being in the form prescribed by statute, i. e., "itemized vouchers therefor, approved by the chairman of the Commission," is *prima facie* correct. The defendants do not controvert the fact of the expenditures therein shown to have been made under the direction of the Commission, nor of the money paid into the Treasury; and, as under the circumstances of this case we have no reason to doubt the correctness or legality of such expenditures, the claimant is entitled to recover, and judgment will be entered accordingly.

O